

specified in the lease (unless the equipment or facilities were idle as a result of planned suspension of operations, for example, for grid operations or during bird migration season).

(b) Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease under § 162.592.

**§ 162.547 How must a WSR lease describe the land?**

(a) A WSR lease must describe the leased premises by reference to a private or public survey, if possible. If the land cannot be so described, the lease must include one or more of the following:

- (1) A legal description;
- (2) A survey-grade global positioning system description; or
- (3) Another description prepared by a registered land surveyor that is sufficient to identify the leased premises.

(b) If the tract is fractionated, we will identify the undivided trust or restricted interests in the leased premises.

**§ 162.548 May a WSR lease allow compatible uses?**

The lease may provide for the Indian landowners to use, or authorize others to use, the leased premises for other uses compatible with the purpose of the WSR lease and consistent with the terms of the WSR lease. This may include the right to lease the premises for other compatible purposes. Any such use or authorization by the Indian landowners will not reduce or offset the monetary compensation for the WSR lease.

WSR LEASE MONETARY COMPENSATION  
REQUIREMENTS

**§ 162.549 How much monetary compensation must be paid under a WSR lease of tribal land?**

(a) A WSR lease of tribal land may allow for any payment negotiated by the tribe, and we will defer to the tribe and not require a valuation if the tribe submits a tribal authorization expressly stating that it:

- (1) Has negotiated compensation satisfactory to the tribe;
- (2) Waives valuation; and

(3) Has determined that accepting such negotiated compensation and waiving valuation is in its best interest.

(b) The tribe may request, in writing, that we determine fair market rental, in which case we will use a valuation in accordance with § 162.551. After providing the tribe with the fair market rental, we will defer to a tribe's decision to allow for any payment amount negotiated by the tribe.

(c) If the conditions in paragraph (a) or (b) of this section are not met, we will require that the lease provide for fair market rental based on a valuation in accordance with § 162.551.

**§ 162.550 How much monetary compensation must be paid under a WSR lease of individually owned Indian land?**

(a) A WSR lease of individually owned Indian land must require payment of not less than fair market rental before any adjustments, based on a fixed amount, a percentage of the projected gross income, megawatt capacity fee, or some other method, unless paragraphs (b) or (c) of this section permit a lesser amount. The lease must establish how the fixed amount, percentage or combination will be calculated and the frequency at which the payments will be made.

(b) We may approve a lease of individually owned Indian land that provides for the payment of nominal compensation, or less than a fair market rental, if:

(1) The Indian landowners execute a written waiver of the right to receive fair market rental; and

(2) We determine it is in the Indian landowners' best interest, based on factors including, but not limited to:

- (i) The lessee is a member of the immediate family, as defined in § 162.003, of an Indian landowner;
- (ii) The lessee is a co-owner of the leased tract;
- (iii) A special relationship or circumstances exist that we believe warrant approval of the lease;
- (iv) The lease is for public purposes; or

(v) We have waived the requirement for a valuation under paragraph (e) of this section.